

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAYLOR JONES and
CHRISTIAN JONES, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMES JONES,

Respondent-Appellant.

UNPUBLISHED

April 26, 2007

No. 272577

Genesee Circuit Court

Family Division

LC No. 02-115021-NA

Before: Whitbeck, C.J., and Murphy and Cooper, JJ.

PER CURIAM.

Respondent James Jones appeals as of right the order terminating his parental rights to his minor children.¹ We affirm.

I. Basic Facts And Procedural History

Taylor Jones and two older half-siblings were initially made temporary court wards in March 2002, after their mother, Tiffany White,² left Taylor Jones on the cold, snowy porch of a paternal relative. James Jones admitted at the preliminary hearing that he did not have an appropriate home for the child. The children were placed with their maternal grandmother. James Jones missed an April 2002 hearing and his appointed attorney, Catherine L. Stalker-Gardner, said she had no contact with him and took no position on his behalf.

Christian Jones was born on July 8, 2002. James Jones attended a July 12, 2002 review hearing, and Stalker-Gardner said that James Jones wanted to work out an agreement with White for visits after the children were returned to her. White said James Jones rarely visited Taylor Jones and called the day after Christian Jones was born. James Jones apologized and said he

¹ MCL 712A.19b(3)(a)(ii) and (g).

² The trial court terminated Tiffany White's parental rights to Taylor and Christian Jones and their half-siblings. However, Tiffany White is not a party to this appeal.

would do his best to visit. The trial court granted the Department of Human Services (DHS) discretion to return Taylor Jones to White. The trial court terminated jurisdiction in October 2002. A foster care worker informed the trial court that James Jones was not at the review hearing that day because he was babysitting the children, who had already returned to their mother's care.

DHS again sought temporary custody of Taylor Jones, Christian Jones, and their half-siblings in March 2003, and the children were placed with their maternal grandmother. James Jones attended the preliminary hearing. The trial court ordered White's visits supervised by the maternal grandmother and James Jones's visits supervised by DHS. At an April 2003 pretrial hearing, James Jones's court-appointed attorney, Theresa M. Haruska, said she tried unsuccessfully to contact James Jones, who did not attend the hearing. Haruska said she believed White's consent to jurisdiction might be wise. White admitted she left Christian Jones in his car seat on the road next to her car. She explained that she had driven to where James Jones was staying and intended to take Christian Jones to him, but they had a disagreement and James Jones grabbed her and then ran after her down the road.

Haruska said she did not know whether any father had visitation rights. She said she was concerned whether White was too disabled to care for the children but was not in a position to object to White's visitation. A foster care worker said James Jones received messages and letters but refused all contact with workers and parenting time because he wanted it unsupervised. Haruska repeated that she did not know what parenting time James Jones received; however, she said that "if he were concerned with his parenting time he probably should have been in [c]ourt today." The trial court held that James Jones would receive supervised visits if he chose to cooperate. Subsequent orders in the trial court record granted discretion to extend White's visits but did not mention parenting time for James Jones.

James Jones did not attend a January 2004 review hearing, at which Haruska told the court she had nothing to say on his behalf. In March 2004, Richard T. Ponsetto, Jr., was substituted as James Jones's attorney. At the April 2004 permanency planning hearing, a foster care worker reported that White was charged with a felony and that the grandmother would hopefully seek guardianship. James Jones did not attend the hearing. Ponsetto asked whether James Jones was the children's legal father. The trial court suspended White's visits and did not mention parenting time for James Jones. At the July 2004 review hearing, the worker was waiting for the grandmother to fill out guardianship paperwork, and Ponsetto said that guardianship was better than termination. The trial court granted both parents supervised visits.

At a October 29, 2004 review hearing, the trial court changed the permanency plan to termination and authorized a termination petition because the grandmother was reluctant to seek guardianship. Ponsetto reported that he had contact with James Jones in April 2004 and again on October 21, 2004, when he tried to return James Jones's message that he wanted to come to court. Ponsetto said he left a message at the telephone number James Jones provided, telling him to come to court that day; however, James Jones did not appear. The attorney said, "I would object to termination," but did not argue further. After that hearing, Ponsetto said he returned to his office and found that James Jones left a message before the hearing. Ponsetto said he tried to return the call and then wrote James Jones a letter on November 1, 2004, telling him to contact Sheila Conyers, who became the caseworker in July 2004.

At a January 2005 review hearing, Conyers said James Jones signed a parent-agency agreement, submitted a drug screen positive for marijuana, and completed an evaluation, which recommended outpatient substance abuse treatment. She said he did not complete his scheduled outpatient intake and she had not talked to him since. James Jones was not present at the hearing. However, Conyers said James Jones had contact with the children through their grandmother. Ponsetto objected to termination, but did not argue further. He also objected to suspending visits, adding "it sounds like he doesn't get it." Ponsetto said he made it clear in his November 2004 letter what would happen if James Jones did not cooperate but that it sounded like James Jones was still receiving visits somehow. Conyers explained that, although visits were usually suspended when the court authorized termination, she could not enforce that without a court order. The trial court held that both parents should continue supervised visits if they requested them, explaining that it was unfair to suspend visits in anticipation of a termination petition that might be filed.

At an April 2005 review hearing, Ponsetto reported that, although James Jones used to call the day of hearings to ask why Ponsetto was not doing anything for him, he had not heard from James Jones since October 2004. Ponsetto again objected to termination with no further argument. Conyers reported that DHS had to proceed with termination because the grandmother was not ready to commit to guardianship. The trial court's order granted only White supervised visits. The children were placed in foster care in June 2005, after the grandmother said she was moving out of state and did not want the children.

At a July 2005 hearing, Ponsetto said he did not know where James Jones was, and Conyers reported that James Jones called periodically but never left a telephone number where he could be reached.

In September 2005, James Jones's children were moved to a paternal aunt's home, where they remained throughout the proceedings. James Jones attended an October 2005 review hearing. A Catholic Charities worker said that James Jones was participating in parenting time and working on his parenting skills. The Catholic Charities worker said that James Jones was participating in its Family Reunification Program, she believed he was employed, and he was working on housing. However, James Jones submitted two screens that were positive for marijuana in September and October 2005, and he provided no evidence that he was in substance abuse treatment. Conyers admitted that James Jones was trying to comply; however, she said DHS was seeking termination of all fathers' rights because "we're doing them altogether." Conyers said that, to avoid termination, James Jones had to submit clean drug screens, continue participating in parenting time effectively, and following the evaluation recommendation that he obtain substance abuse treatment. The trial court authorized James Jones to have supervised visits, which could be supervised by a relative.

James Jones also attended a January 2006 review hearing. Conyers said James Jones was participating in parenting classes and individual therapy, was making very good progress in the Family Preservation Program's twice weekly support groups, and was consistent with parenting time. However, Conyers said James Jones only submitted one of four requested screens, and that was one was positive for marijuana. She said further that James Jones lacked employment and appropriate housing. Ponsetto objected to termination because James Jones was making "fairly decent progress" and was "working on the substance abuse issues." However, the trial court said termination would remain the permanency plan because substance abuse, housing, and

employment were still significant hurdles for James Jones. Conyers later testified that James Jones did another substance abuse intake assessment in January 2006 but attended only one treatment session.

DHS filed for termination of every parent's rights in March 2006. Ponsetto said James Jones had to leave an April 2006 hearing because he just started a new job as a supervisor. Ponsetto opposed Conyers' request to suspend James Jones's parenting time. A foster care supervisor testified that James Jones consistently attended his weekly visits for several months, that the visits were appropriate, and that the children wanted to see him and had a good time. The trial court allowed James Jones's supervised visits to continue.

James Jones did not attend a May 2006 review hearing. Conyers said James Jones was not in full compliance with his parent-agency agreement and visits should be suspended. Ponsetto objected but did not offer further argument, and the trial court agreed to suspend James Jones's visits. Rochelle J. Thompson was substituted as James Jones's attorney on June 2, 2006, and the trial court agreed to adjourn trial until July 2006. Thompson said she sent James Jones a letter but did not have contact with him yet.

James Jones did not attend his trial. Conyers testified that, although Catholic Charities started supervising the case in July 2005, she was familiar with the entire file. Conyers said that, as far as she knew, James Jones was still living in one bedroom in a relative's home. She said James Jones's employer confirmed that he started working at a car wash shortly before the last hearing; however, she said James Jones failed to verify his income as requested. Conyers said James Jones was given 18 drug screens and completed only five, which were all positive for marijuana. Conyers testified that James Jones attended a significant number of the 30 or more Family Preservation Program sessions that were offered.

Conyers opined that James Jones needed to provide financial and emotional stability and that his substance abuse and unwillingness to complete required services reflected his emotional instability and ability to care for his children. She opined further that he was an inappropriate caregiver if he used substances because they altered personality and the ability to function, make good decisions, focus on the children's well-being, and be responsible. She said the children needed permanency and a stable environment.

During cross-examination, Thompson focused entirely on whether the fathers received notice. The trial court found sufficient notice. Thompson briefly questioned a Catholic Charities foster care worker but did not ask about James Jones's visits or services. Thompson offered no witnesses and waived opening argument. In her closing argument, she explained that she sent letters to James Jones's last known address and no mail was returned. She objected to termination but did not argue further.

The trial court found that James Jones abandoned his children, failed to provide proper care and custody, and was unable to provide proper care and custody. The trial court observed that James Jones made some effort, but the effort ceased. The trial court also observed that the parents' attorneys were representing people who did not make themselves available to facilitate their representation. The trial court held that it was not against the children's best interests to terminate their parents' parental rights and terminated the mother's and fathers' parental rights.

II. Effective Assistance Of Counsel

A. Standard Of Review

James Jones argues that he was denied effective assistance of counsel because he had four different court-appointed attorneys, the attorneys were changed at key times, the attorneys said little during hearings, and two attorneys said negative things about James Jones. Because James Jones failed to move for a new trial or request an evidentiary hearing, our review is limited to any mistakes apparent on the record.³

B. James Jones's Representation

A respondent in child protective proceedings has the right to effective assistance of counsel, and the court must apply the principles of effective assistance established in criminal law.⁴ The trial court's decision is reversed only when counsel's performance fell below an objective level of reasonableness and the party was denied a fair trial as a result.⁵

There are no specific prohibitions against changing the court-appointed attorney during the proceedings; the issue is how the changes affected the quality of representation.⁶ In the present case, the changes arguably made the attorneys less informed about their client. At least one attorney made a comment about James Jones that seemed negative, and another comment could have been interpreted negatively. However, there was no evidence that James Jones was prejudiced by the comments. None of the attorneys argued strongly on James Jones's behalf, especially during the termination hearing. However, James Jones did not assist in his own defense by attending the critical hearings or responding to his attorneys' efforts to make contact.⁷

The attorneys' actions did not fall below an objective level of reasonableness because James Jones did not cooperate and assist in his own defense and made no contact with his last attorney. Therefore, he was not denied effective assistance of counsel.⁸ Further, James Jones failed to establish a reasonable probability that the outcome would have been different with more zealous representation.⁹ Although the attorneys could have emphasized that he made some effort and had appropriate visits with his children, there was no evidence that he ever resolved his continuing marijuana use or found appropriate housing. Moreover, he failed to attend the final hearings. The attorneys were not responsible for inspiring James Jones to fight for his own parental rights.

³ *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

⁴ *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988).

⁵ *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

⁶ *In re Pasco*, 150 Mich App 816, 825; 389 NW2d 188 (1986).

⁷ See *id.*

⁸ See *Toma*, *supra* at 302.

⁹ See *id.* at 302-303.

III. Termination Of Parental Rights

A. Standard Of Review

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.¹⁰ We review the trial court's order terminating parental rights for clear error.¹¹ We defer to the trial court's special opportunity to assess the credibility of the witnesses.¹² A finding of fact is clearly erroneous if we are left with a definite and firm conviction that a mistake was made.¹³ Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly not in the child's best interests.¹⁴ There is no specific burden on either party; rather, the trial court should weigh all evidence available.¹⁵ We also review the trial court's decision regarding the child's best interests for clear error.¹⁶

B. Clear And Convincing Evidence

There was clear and convincing evidence that James Jones abandoned his children when he failed to attend hearings, contact his attorneys, or otherwise pursue custody for more than 91 days. The Department of Human Services also provided sufficient evidence that James Jones failed to provide proper care and custody and was not reasonably likely to do so within a reasonable time. After more than three years, James Jones still lacked appropriate housing, failed to deal with his substance abuse, and demonstrated his inability to remain committed to gaining custody of his children. Therefore, the trial court did not err when it found that the statutory grounds under MCL 712A.19b(3)(a)(ii) and (g) had been met.

C. Children's Best Interests

James Jones had appropriate visits with his children, and the foster care worker said the children wanted to see James Jones. This bond was relevant to the analysis.¹⁷ However, the trial court properly considered the children's need for permanence more than three years after these

¹⁰ *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

¹¹ MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

¹² MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

¹⁴ MCL 712A.19b(5); *In re Trejo*, *supra* at 353, 354-355, 364-365.

¹⁵ *Id.* at 354.

¹⁶ *In re Trejo*, *supra* at 356-357.

¹⁷ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

proceedings began and four years after the children first became temporary wards.¹⁸ The trial court did not err when it held that termination was not clearly against the children's best interests and terminated James Jones's parental rights.

We affirm.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper

¹⁸ See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).